HAMZAH HM SAMAN & ORS A

v.

RONALD BEADLE

COURT OF APPEAL, PUTRAJAYA B
KN SEGARA JCA
SULAIMAN DAUD JCA
HISHAMUDIN MOHD YUNUS JCA
[CIVIL APPEAL NO: W-01-37-2007]
22 FEBRUARY 2010 C

REVENUE LAW: *Income tax - Outstanding tax - Issuance of certificate under s. 104 Income Tax Act 1967 - Passport withheld for 5968 days - Whether issuance of certificate lawful - Whether claim for damages unsustainable - Income Tax Act 1967, ss. 104, 106* D

ADMINISTRATIVE LAW: *Exercise of administrative powers - Public officer - Tax officer issuing certificate under s. 104 Income Tax Act 1967 - Whether proper exercise of power by officer - Income Tax Act 1967, ss. 104, 106* E

CIVIL PROCEDURE: *Damages - Claim for wrongful withholding of passport for non-payment of outstanding tax - Whether claim challenging exercise of statutory power by public officer under s. 104 Income Tax Act 1967 - Whether a judicial review matter - Whether damages claim sustainable* F

The respondent as plaintiff filed a claim against the appellants as defendants for damages in the sum of RM2,935,568.65, *inter alia*, for the wrongful act of withholding his British international passport. The respondent's passport was withheld on the ground that he had G not settled his outstanding tax payment to the 2nd appellant, the Inland Revenue Board, upon cessation of his employment with one Sea Helicopter Sdn Bhd ('SEAH'). He was issued a certificate under s. 104 of the Income Tax Act 1967 ('the Act') by the Assistant Director General of Income Tax, the 1st appellant, by H virtue of which he was prevented from leaving Malaysia without settling his tax payment or furnishing security for the said payment. It was not disputed that SEAH had deducted a total sum of RM27,943 from the respondent's monthly salaries but failed to remit a sum of RM22,778.70 when directed to do so by the 2nd appellant I towards payment of the respondent's tax payable. The trial judge

A entered judgment in favour of the respondent for a total sum of RM3 million in damages with interest and costs (see High Court case *Ronald Beadle v. Hamzah HM Saman & Ors* [2008] 1 CLJ 298; see also related cases [2007] 1 CLJ 421; [2002] 2 CLJ 537; [1998] 1 CLJ 392. The appellants now appealed.

B

Held (allowing the appeal)
Per KN Segara JCA delivering the judgment of the court:

(1) Personal income tax is a personal liability of an individual and not a liability of an employer. It is the individual who has been assessed the tax that must make the payment. Section 104 of the Act is a provision that facilitates recovery of tax from persons leaving Malaysia, whether upon cessation of employment or otherwise. (para 8)

D **(2)** Tax due and payable may be recovered by the government by civil proceedings as a debt due to the government under s. 106(1) of the Act. In any proceedings under s. 106, the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed under E appeal or incorrectly increased under subsection 103(3), (4), (5), (6), (7) or (8). (para 9)

(3) The s. 104 certificate was lawfully issued *bona fide* by the 1st appellant in the execution of his statutory duties and powers F under the Act. He had acted neither arbitrarily nor unreasonably on the facts when he issued the certificate. The pre-requisites for the issuance of the certificate were patently satisfied *vide* the Act. It was evident from the facts and circumstances immediately preceding the issuance thereof that the respondent G was likely to leave Malaysia without settling his outstanding tax. (paras 13 & 14)

(4) It was observed from the tone of the respondent's letter dated 20 March 1986 to the 2nd appellant, the respondent's continued defiance of the tax authorities and the tax laws in H respect of his tax liability. The respondent was the author of his predicament with the tax authorities by his adamant conduct to resist responsibility for his tax liabilities and his persistent attempt to shift liability to SEAH and/or the 1st and 2nd appellants. (paras 19 & 20)

I

(5) The respondent saw the light at the end of the tunnel to his woes over his passport when he eventually made the payment into court of the security deposit. He could have achieved that earlier by furnishing the security to the 2nd appellant as stipulated by the s. 104 certificate without the necessity of any application into court. His subsequent filing of the damages action for the alleged unlawful retention of his passport by the 2nd appellant was an irony. If the detention of his passport had been unlawful, the court would most certainly have ordered its release unconditionally. (para 25)

(6) The trial judge had seriously misdirected herself on the facts and the law. The only relevant issue for determination in the instant appeal was whether the 1st appellant had lawfully issued the s. 104 certificate which issuance was found to be lawful. The 1st appellant had acted at all material times well within the framework and scheme of the Act. The certificate could not be the subject matter of a challenge in the suit. The consequences flowing from the Act were foreseeable and could easily have been avoided or overcome by the respondent from the very outset if he had acted sensibly and rationally to his tax liabilities. The answer to his problem was laid bare in the certificate itself but the respondent chose to ignore it at his own peril. In the circumstances, damages, if any, must lay where it fell. The appellants were completely exonerated from any liability. (paras 30-32)

(7) The respondent's claim in the civil suit was totally misconceived, exaggerated and ill-perceived with the intention of raking a windfall. In the circumstances, damages were wholly unsustainable in law and in fact. In the absence of any special circumstances, it was irregular and inappropriate to challenge the exercise of a statutory power of a public officer in collateral proceedings for damages by a writ action without resort to any appropriate judicial review proceedings relating to the certificate within the time frame stipulated in the Rules of the High Court 1980. (paras 33 & 34)

[Appellants' appeal allowed with costs at RM5,000. Respondent's cross-appeal dismissed with no costs.]

Bahasa Malaysia *Translation Of Headnotes*

Responden selaku plaintif telah memfail tuntutan terhadap perayu-perayu selaku defendan-defendan menuntut gantirugi berjumlah RM2,935,568.65, antara lain kerana tindakan salah pihak terkemudian tersebut memegang-simpan pasport antarabangsa Britain miliknya. Pasport responden dipegang-simpan atas alasan bahawa beliau telah gagal menyelesaikan bayaran cukai tertunggaknya kepada perayu kedua, Lembaga Hasil Dalam Negeri, setelah kerjanya dengan syarikat Sea Helicopter Sdn Bhd ('SEAH') tamat. Satu sijil di bawah s. 104 Akta Cukai Pendapatan 1967 ('Akta') telah dikeluarkan terhadap responden oleh perayu pertama, Penolong Ketua Pengarah Cukai Pendapatan, berakibat responden dilarang dari meninggalkan Malaysia tanpa terlebih dahulu menyelesaikan bayaran cukainya atau menyediakan suatu jaminan baginya. Tidak dinafikan bahawa SEAH telah pun menolak sebanyak RM27,943 dari gaji responden, namun gagal memasukkan RM22,778.70 apabila diarahkan berbuat demikian oleh perayu kedua bagi membayar cukai responden. Hakim bicara memasukkan penghakiman untuk responden dan sekaligus membenarkan gantirugi sebanyak RM3 juta beserta dengan faedah dan kos (lihat kes Mahkamah Tinggi *Ronald Beadle v. Hamzah HM Saman & Ors* [2008] 1 CLJ 298; lihat juga kes-kes berkaitan [2007] 1 CLJ 421; [2002] 2 CLJ 537; [1998] 1 CLJ 392). Perayu-perayu kini merayu.

Diputuskan (membenarkan rayuan)
Oleh KN Segara HMR menyampaikan penghakiman mahkamah:

(1) Cukai pendapatan peribadi adalah suatu tanggungan peribadi seseorang individu dan bukan merupakan tanggungan majikan. Individu yang berkenaan adalah orangnya yang dikenakan taksiran cukai dan dia perlu membuat pembayarannya. Seksyen 104 Akta pula adalah peruntukan yang membantu penuntutan cukai dari mereka yang meninggalkan Malaysia, sama ada disebabkan oleh tamat kerja atau sebaliknya.

(2) Cukai yang tertunggak dan perlu dibayar boleh dituntut oleh kerajaan melalui prosiding sivil sebagai hutang tertunggak di bawah s. 106(1) Akta. Dalam mana-mana prosiding di bawah s. 106, mahkamah tidak akan melayan apa-apa plea bahawa jumlah cukai yang hendak dituntut adalah terlalu tinggi, disalah taksir, sedang dirayui ataupun disalah tambah di bawah seksyen kecil 103(3), (4), (5), (6), (7) atau (8).

(3) Sijil s. 104 telah dikeluarkan secara sah dan bona fide oleh perayu pertama dalam melaksanakan tanggungjawab dan kuasa statutorinya di bawah Akta. Berdasarkan fakta, beliau bukannya bertindak secara arbitrari atau tidak munasabah apabila mengeluarkan sijil. Syarat-syarat bagi pengeluaran sijil seperti yang tertera dalam Akta telah dipatuhi sepenuhnya. Adalah jelas dari fakta dan halkeadaan kes yang wujud sebelum pengeluaran sijil bahawa responden berkemungkinan akan meninggalkan Malaysia tanpa menyelesaikan tunggakan cukainya.

(4) Dari nada surat responden bertarikh 20 Mac 1986 kepada perayu kedua, dapat dilihat kedegilan berterusan responden terhadap pihakberkuasa cukai dan undang-undang percukaian bersabit tanggungan cukainya. Responden sendiri bertanggungjawab atas kekusutan yang dihadapinya dengan pihakberkuasa cukai, akibat dari sikap keras kepalanya untuk mengelak dari tanggungan cukai serta percubaan yang terus menerus untuk mengalih pertanggungjawaban kepada SEAH dan/atau perayu-perayu pertama dan kedua.

(5) Terdapat cahaya penyelesaian di akhir terowong kepada masalah pasport responden sebaik beliau membuat bayaran jaminan deposit ke dalam mahkamah. Beliau mampu memperoleh penyelesaian tersebut lebih awal lagi dengan mengemukakan jaminan deposit kepada perayu kedua seperti yang dikatakan oleh sijil s. 104 tanpa perlu membuat permohonan di mahkamah. Pemfailan tindakan gantirugi olehnya kemudian kerana dakwaan penahanan salah pasportnya oleh perayu kedua adalah ironik. Jika penahanan pasportnya salah, mahkamah tentunya akan memerintahkan pengembalian passport tersebut tanpa syarat.

(6) Hakim bicara dengan seriusnya telah tersalah arah akan dirinya di atas fakta dan undang-undang. Satu-satunya isu relevan yang perlu diputuskan di dalam rayuan ini adalah sama ada perayu pertama telah dengan sahnya mengeluarkan sijil s. 104 di mana pengeluaran tersebut telah didapati sah. Pada setiap waktu material perayu pertama telah bertindak dalam ruanglitup dan skim Akta. Sijil tidak boleh menjadi halperkara pertikaian di dalam guaman. Akibat-akibat yang berbangkit dari Akta adalah boleh dijangkakan dan dengan senangnya boleh dielakkan atau diatasi oleh responden dari awal-awal lagi sekiranya dia bertindak secara munasabah dan rasional berkaitan tanggungan-

tanggungan cukainya. Jawapan kepada masalahnya terserlah jelas di dalam sijil tersebut tetapi responden memilih untuk tidak mengendahkannya dan menanggung akibatnya. Dalam keadaan sedemikian, gantirugi, jikapun ada, hendaklah berada di tempat ia jatuh. Perayu-perayu terlepas sepenuhnya dari sebarang tanggungan.

(7) Tuntutan responden di dalam guaman sivil adalah amat songsang, tidak mantap dan dilebih-lebihkan dengan tujuan untuk mengaut durian runtuh. Oleh itu, gantirugi sekali-kali tidak boleh diberi di sisi undang-undang mahu pun fakta. Dalam ketiadaan apa-apa halkeadaan istimewa, adalah tidak teratur dan tidak wajar untuk mencabar pelaksanaan kuasa statutori oleh pegawai awam dalam prosiding kolateral untuk gantirugi melalui tindakan writ tanpa menggunapakai prosiding semakan kehakiman yang sesuai berkaitan dengan sijil dalam tempoh masa yang ditetapkan oleh Kaedah-Kaedah Mahkamah Tinggi 1980.

[Rayuan perayu-perayu dibenarkan dengan kos RM5,000. Rayuan balas responden ditolak dengan kos.]

Legislation referred to:
Income Tax Act 1967, ss. 83(3), 103(3), (4), (5), (6), (7), (8), 104(1), 106(1), 115(1), (2)

For the appellants - Nik Marzuki Nik Mohamad; AG's Chambers
For the respondent - Jeffrey Wong (Farahatun Najwa Paidin with him); M/s Jeffrey Wong, Noorul, Ho & Lim

[Appeal from High Court, Kuala Lumpur; Suit No: S4(S6)-21-64-2000]

[Editor's note: For the High Court judgment, please see Ronald Beadle v. Hamzah HM Saman & Ors [2008] 1 CLJ 298.]

Reported by Usha Thiagarajah

JUDGMENT

KN Segara JCA:

[1] The respondent (plaintiff), a British citizen, started his employment with SEA Helicopters Sdn Bhd (SEAH) on 29 February 1972. He resigned from SEAH with effect from 29 December 1980. When the plaintiff left SEAH, a total sum of

RM27,943.00 belonging to the plaintiff, that had been deducted from his monthly salaries, was in the hands of SEAH. Pursuant to s. 83(3) Income Tax Act 1967 (the Act) SEAH notified the Jabatan Hasil Dalam Negeri, the 2nd appellant (2nd defendant) of the plaintiff's resignation.

> (Section 83(3): "Where an employer is about to cease to employ an individual who is likely to be chargeable to tax in respect of income in respect of gains or profits from the employment, the employer shall not later than one month before the cessation give written notice thereof to the Director General stating the full name and address of the individual and the expected date of cessation:
>
> Provided that, where he is satisfied that it is reasonable to do so in the circumstances, the Director General may accept for the purposes of this subsection a notice given less than one month before the cessation or a notice given on or after the cessation:
>
> Provided further …)

[2] After receiving the notification from SEAH of the plaintiff's resignation, the 2nd defendant wrote to the plaintiff on 23 February 1981 informing him that SEAH had been instructed to withhold all sums payable to the plaintiff, pending clearance from the 2nd defendant. The plaintiff was required to notify the 2nd defendant should there be a change of his address.

> (section 83(5) of the Act states: "Notwithstanding the provisions of any written law to the contrary, **where an employer has in his possession any moneys whatsoever** which are or may be payable to or for the benefit of an employee who has **ceased to be employed** by him or is about to leave Malaysia for a period of more than three months with no intention of returning, he **shall not, without the permission of the Director General, pay any part of those moneys to or for the benefit of the employee** until ninety days after the receipt by the Director General of the notice required to be given under subsection (3) or (4) as the case may be, and **if at any time the Director General directs him to pay** the full amount or a portion of those moneys towards payment of the tax payable by the employee, **he shall pay as directed.**) (emphasis provided)

[3] The plaintiff replied, on 5 March 1981, informing the 2nd defendant of his residential address and that he was awaiting the issue of a work permit for him to be employed by Eagle Aviation Services Sdn Bhd, a company incorporated by the plaintiff. The 2nd

defendant then, on 6 April 1981, directed SEAH to remit a sum of RM22,778.70 from the amount of the plaintiff's money retained by SEAH, towards payment of tax payable by the plaintiff. At the same time, the 2nd defendant informed SEAH that the balance remaining in their hands thereafter could be released to the plaintiff ("Segala baki yang dipegang boleh dilepaskan untuk dibayar"). A copy of that letter was extended to the plaintiff with a notation to him, at the bottom thereof, setting out the computation for RM22,778.70 as follows:

Tanggungan cukai tuan ialah:

Baki Debit dalam akaun	=	$ 8820.50
Cukai asal Tahun Taksiran 1981	=	12781.00
Cukai Tambahan Tahun Taksiran 80	=	663.60
Cukai Tambahan Tahun Taksiran 79	=	513.60
Jumlah cukai		22778.70

[4] On 30 May 1981 the 2nd defendant also wrote to Eagle Aviation Services Sdn Bhd to inquire about the plaintiff's employment with the said company. It reads:

> Dari maklumat yang saya terima penama diatas akan bekerja disyarikat tuan. Sila sahkan pekara tersebut.
>
> 2. Jika benar, sila beritahu hal-hal dibawah:
>
> 1) tarikh mula bekerja;
>
> 2) jumlah gaji sebulan yang diterima;
>
> 3) jumlah saran-saraan lain yang diterima jika ada;
>
> 4) sila kemukakan borang I.T. 22 ke jabatan ini.
>
> Jawapan yang awal sangat dihargai.

[5] Eagle Aviation Services Sdn Berhad replied on 19 November 1981:

> Kami adalah **sebuah Syarikat yang baru** dan telah mula operasi kami sejak **1hb November, 1981.** Kini kami sukacita dapat tuan memberi kami Nombor Ingatan Majikan dan/atau borang-borang permohonan, jika ada, untuk membolehkan kami membuat pembayaran cukai pendapatan pekerja-pekerja di Syarikat kami secara ansuran.

Sekian, diucapan ribuan terima kasih.

Yang benar

Eagle Aviation Services Sdn. Berhad

... SD ...

R.Beadle
Pengarah Urusan.

(emphasis provided)

[6] It is pertinent to note that the letter was signed by the plaintiff as "Pengarah Urusan".

[7] SEAH failed to remit the sum of RM22,778.70 to the 2nd defendant in response to the 2nd defendant's request on 6 April 1981. The plaintiff himself did not settle his personal income tax liability outstanding upon his termination of employment with SEAH, the computation of which sum he was reminded by way of the notation in the letter referred to above. In fact he refused to settle the said sum, taking a resolute and adamant stand that it was SEAH's responsibility to remit same out of his monies in SEAH'S hands. It was an unwise and ill advised move, on the part of the plaintiff.

[8] We are unanimous that personal income tax is a personal liability of an individual and not a liability of an employer. It is the individual who has been assessed the tax that must make the payment. Section 104 of the Act is a provision of the Act that facilitates recovery of tax from persons leaving Malaysia, whether upon cessation of employment or otherwise.

[9] Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government under s. 106(1) of the Act. In any proceedings under s. 106, the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under subsection 103(3), (4), (5), (6), (7) or (8).

[10] On 17 December 1981, the Assistant Director General of Income Tax, Hamzah H. M. Saman, the 1st appellant herein (1st defendant), issued a certificate under s. 104 of the Act. He also sent the following letter dated 17 December 1981 to the plaintiff:

A This serves to inform you that this Department has issued to the **Ketua Polis Negara** and **Ketua Pengarah Imigresen Malaysia** a Certificate under Section 104 of the Income Tax Act 1967 requesting that you be prevented from leaving Malaysia until the sum of $22,778.70 being your Income Tax liability is paid **or security furnished** to my satisfaction for the payment of the same.

B

2. An extract of Section 104 and 115 of the said Act is enclosed for your information.

3. For your own convenience you are advised, when making payment of the above tax to obtain a Clearance Certificate from this Department, otherwise you may be prevented from leaving the country.

C

(emphasis provided)

D **[11]** Section 104(1) of the Act reads:

The Director General, where he is of the opinion that any person is about or **likely** to leave Malaysia **without paying**:

(a) all tax payable by him (whether or not due or due and payable);

E

(b) all sums payable by him under subsection 103(3), (4), (5), (6), (7) or (8);

and

F

(c) all debts payable by him under subsection …

may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the tax, sums and debts so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the tax, sums and debts so payable **or furnishes security** to the satisfaction of the Director General for their payment.

G

(emphasis provided)

H **[12]** Section 115(1) and (2) of the Act reads:

115(1) Any person who, knowing that a certificate has been issued in respect of him under section 104, voluntarily leaves or attempts to leave Malaysia without paying all the tax, sums and debts specified in the certificate or furnishing security to the satisfaction of the Director General for the payment thereof shall be guilty of an

I

offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) A police officer or immigration officer may arrest without warrant any person whom he reasonably suspects to be committing or about to commit an offence under this section.

[13] We are unanimous that the certificate, issued on 17 December 1981 under s. 104(1) of the Act by the 1st defendant, to prevent the plaintiff from leaving Malaysia without paying all tax payable by him as at 17 December 1981 or furnishing security for the payment of the said tax (RM22778.70), was lawful. It was issued *bona fide* by the 1st defendant in the execution of his statutory duties and powers under the Act.

[14] The 1st defendant had acted neither arbitrarily nor unreasonably, on the facts relevant to the plaintiff's tax liability, when he issued the certificate on 17 December 1981. The pre-requisites for the issue of the certificate were patently satisfied, *vide* the Act. That the plaintiff was very likely to leave Malaysia without paying all the tax payable by him is evident from the facts and circumstances immediately preceding the issue of the certificate, because:

1) as at 17 December 1981 the plaintiff had still not paid his tax liability of RM22,778.70, of which he had notice on 6 April 1981;

2) the plaintiff had ceased his employment with SEAH on 31 December 1980 and was unemployed;

3) SEAH failed and/or refused to remit any portion of the plaintiff's money in its hands to the 2nd defendant;

4) the plaintiff had not obtained any work permit for employment by Eagle Aviation Services Sdn Bhd, his prospective new employer, as at 5 March 1981;

5) the plaintiff is a British citizen;

6) the plaintiff is not a permanent resident of Malaysia.

[15] Pursuant to the certificate and directive issued by the 1st defendant on 17 December 1981, the plaintiff's Passport No B128652 was seized on 3 April 1982 by one Inspector Azmy bin Mohd Yunus of the Setapak Police Station.

[16] By letter dated 20 February 1986, using the letter-head of "Eagle Aviation Services Sdn Bhd" and signing off the letter as "Managing Director", the plaintiff wrote to the 2nd defendant, as follows (so much as is relevant to this judgment is now reproduced):

> Re: Mr Ronald Beadle
> Income Tax File No. Sg. 528708-05
>
> **Income Tax Owing**
>
> …
>
> With respect to our discussion for satisfactory security in the form of a Bank Guarantee for outstanding amount of tax owed, I am unfortunately, not in a position to raise a Bank Guarantee for this amount.
>
> I enclose photocopies of my last Bank Statements from both my Malaysian and U.K. accounts for your perusal.
>
> In view of my limited financial resources at this time, I should be very grateful if you would kindly consider the following alternative satisfactory for the **purpose of releasing my passport** to enable me to visit my parents in the United Kingdom (I have not seen them since 1975 and they are now too old to travel), and also **give me the freedom to travel on business** with respect to the Malaysian Companies of which I am the Managing Director and a shareholder.
>
> **Schedule Of Payment**
>
> …
>
> …
>
> …
>
> I will not go into details as to why I have I have an outstanding tax bill ...
>
> …

Over the last four years, since the impounding of my passport, it has proved very difficult to carry out my duties as Managing Director, as well as causing great inconvenience to the Police as on each occasion my Work Permit requires renewal, a Policeman must accompany me with my passport to the Immigration Department.

...

...

[17] The 2nd defendant responded, by letter dated 6 March 1986, informing the plaintiff that his proposal for settlement was unsatisfactory and that his Passport would not be returned until acceptable arrangements are made. He was also notified that his outstanding tax liability now stood at RM39,581.48 and unless he settled the outstanding sum by 20 March 1986 court proceedings would be instituted to recover the same. The letter reads:

Merujuk kepada surat tuan bertarikh 20.2.1986, saya ingin memberitahu bahawa cadangan tuan menjelaskan cukai pendapatan adalah tidak memuaskan. Pasport tuan tidak boleh dikembalikan sehingga peraturan yang sesuai diterima. Berikut adalah kedudukan akaun tuan:

Cukai 1980	$	9,621.20	
Denda 10%	$	962.12	
	$	10583.32	
Denda 5%	$	529.83	$11,112.98
Cukai Tambahan 1980	$	663.60	
Denda 10%	$	66.36	
	$	729.96	
Denda 5%	$	36.49	$766.45
Cukai Tambahan 1979	$	513.60	
Denda 10%	$	51.36	
	$	564.96	
Denda 5%	$	28.24	$593.20
Cukai 1981	$	12,781.00	
Denda 10%	$	1,278.10	

		$ 14,059.10	
	Denda 5%	$ 702.85	$14,762.05
	Cukai pindaan 1982	$ 14,525.00	
	Denda 10%	$ 1,452.50	
		$ 15,977.50	
	Denda 5%	$ 798.87	
		$ 16,776.56	
	Bayaran	$ 14,885.00	$1,891.37
	Cukai 1983	$ 5,574.50	
	Denda 10%	$ 557.45	
		$ 6,131.95	
	Denda 5%	$ 306.59	$6438.54
	Cukai 1984	$ 3,125.00	
	Denda 10%	$ 312.50	
		$ 3,437.50	
	Denda 5%	$ 171.87	$3,609,37
	Cukai 1985	$ 311.08	
	Denda 5%	$ 31.05	
		$ 342.13	
	Denda 5%	$ 17.10	$407.52
		$ 39,581.48	

Sila tuan membuat peraturan untuk menjelaskan cukai yang masih terhutang sebanyak $39,581.48 sebelum 20.3.1986. Jika gagal, tindakan Mahkamah akan diambil.

[18] By letter dated 20 March 1986 the plaintiff sent to the 2nd defendant his personal cheque for the amount of RM10,447.23, in purported settlement of his tax. The letter, *inter alia*, set out:

> Subsequent to our last telephone conversation about the non-payment of my recent tax assessments, I have made the necessary financial arrangements to clear this debt with your Department.
>
> …
>
> To clear this debt with your Department I enclose my personal cheque for the amount of RM10,447.23. I should be grateful if you would mail your official receipt to me in due course.
>
> …
>
> It is now fast approaching four (4) years since I surrendered my Passport and your Department has neglected to either rectify the situation and return my Passport to me or take the necessary legal action against me to recover the amount of M$22,778.70 that I supposedly owe to your Department.
>
> In view of your Department's lack of action in this matter, I am taking my British International Passport out of the custody of the Police and if you still wish to impound my Passport, you will have to apply officially to the British High Commission.
>
> …
>
> …

[19] We observe, from the tone of this letter, a clear manifestation by the plaintiff of his continued defiance of the tax authorities and the tax laws, in respect of his tax liability.

[20] We are unanimous that the plaintiff was the author of his predicament with the tax authorities since 17 December 1981, by his adamant conduct to resist responsibility for his tax liabilities and his persistent attempt to shift liability to SEAH and/or the 1st/2nd defendants.

[21] On 31 March 1986 the 2nd defendant informed the plaintiff that he still owed the sum of RM29,134.25 after deducting the sum of RM10,447,23 forwarded by him on 20 March 1986. He was told to make the payment expeditiously so that his Passport could be released to him. The plaintiff failed to make the payment.

[22] On 27 May 1986 a writ of summons and a statement of claim for the sum of RM28,160.70 was issued against the plaintiff by the Government of Malaysia, the 3rd appellant (3rd defendant) herein.

[23] On 5May 1987 the plaintiff paid into court the sum of RM28,200.74 as security for the release of his Passport pursuant to the order of court made on 24 March 1987 in Saman Permulaan No. P 31-51-86.

[24] On 4 April 1998 the 2nd defendant wrote to the Ketua Polis Negara and Ketua Pengarah Imigresen, and copied to the plaintiff, with reference to the s. 104 certificate issued on 17 December 1981, as follows:

> Saya merujuk kepada surat pejabat ini bertarikh 17 Disember, 1981.
>
> 2. Oleh kerana tindakan keatas pembayar cukai telah diselesaikan maka arahan yang telah dikeluarkan itu tidaklah perlu dikuatkuasakan lagi dan sekiranya ada apa-apa dokumen perjalanan yang ada dalam simpanan tuan bolehlah dikembalikan kepadanya.
>
> …
>
> …

[25] It was only upon payment into court of the security deposit on 5 May 1987 that the plaintiff saw the light at the end of the tunnel to his woes over his Passport. He could have achieved this as early as 17 December 1981 by furnishing the security to 2nd defendant instead, as stipulated in the s. 104 Certificate, without the necessity of any application to court! The irony of it all is that he subsequently filed an action for damages in the sum of RM2,935,568.65, which for all intents and purposes, stems from the alleged unlawful retention of his Passport for 5968 days by the 2nd defendant. If the detention of his Passport had been unlawful, the court would most certainly have ordered its release unconditionally.

[26] The plaintiff filed the civil suit, the subject matter of the current appeal, on 31 May 2000, against the defendants for alleged loss and damage suffered by him due to wrongful acts done or neglects or defaults committed as a public officer acting as an agent of or acting under the instructions of the 3rd defendant.

[27] The alleged wrongful acts, neglects or defaults complained against the defendants were: A

1) the issuance of the certificate dated 17 December 1981 by the 1st defendant that the plaintiff was indebted in the sum of RM22,778.70 being his outstanding personal income tax; B

2) issuing a directive dated 17 December 1981 to the Ketua Polis Negara and Ketua Pengarah Imigresen under s. 104 of the Act that the plaintiff be prevented from leaving Malaysia until the said sum of RM22,778.70 be paid or security be furnished to the satisfaction of the Director General of Income Tax; C

3) the seizure of the plaintiff's British Passport on 3 April 1982 by the 3rd defendant;

4) the continuous refusal to withdraw the said certificate/directive and to release the Passport; D

5) retaining the plaintiff's Passport for 5968 days and thereby wrongfully confining him to West Malaysia for that length of time.

E

[28] The trial judge entered judgment against the defendant for a total sum of RM3 million in damages (RM2 million as general damages and RM1million as exemplary damages) with interest and costs.

F

[29] The defendants are appealing against the said judgment and the plaintiff is cross-appealing on the trial judge's decision not to award the plaintiff's claim for his alleged loss of earning capacity as well as on the quantum of general damages.

G

[30] We are of the opinion that the only relevant issue for determination in this appeal before us is whether the 1st defendant had lawfully issued the certificate under s. 104 of the Act on 17 December 1981.

[31] We are unanimous that the trial judge had seriously misdirected herself on the facts and law when she stated in her grounds of judgment: H

I

A

i) ... there is no basis in law and in fact for the 1st defendant to issue the certificate.

ii) ... that the 1st defendant had acted arbitrarily and unreasonably in issuing the certificate and that the action was not in consonant with the purpose of s. 104.

B

iii) ... on the balance of probabilities I am satisfied that the defendants had acted unreasonably and improperly and was wrong in law and in fact to issue the certificate.

C **[32]** We are unanimous, for reasons already stated earlier in this judgment, that the issue of the certificate by the 1st defendant was lawful. He has acted at all material times well within the framework and scheme of the Act. The certificate cannot be the subject matter of a challenge in this suit. The consequences flowing from the certificate were all foreseeable and easily avoided or over-come by

D the plaintiff from the very out-set if he had had acted sensibly and rationally to his tax liabilities. The answer to his problem was laid bare in the certificate itself but the plaintiff chose to ignore it at his own peril. In the circumstances, damages, if any, must lay where it falls. The defendants are completely exonerated and are not

E liable at all.

[33] We are of the opinion the plaintiff's claims in the civil suit are totally misconceived, exaggerated and ill perceived, with the intention of raking a windfall. In the circumstances of this case,

F damages are wholly unsustainable in law and in fact.

[34] In the absence of any special circumstances, we are unanimous that it is irregular and inappropriate to challenge the exercise of a statutory power by a public officer under s. 104 of the

G Act, in collateral proceedings for damages by a writ action in 2000, without resort to any appropriate judicial review proceedings relating to the certificate promptly in 1981/1982, within the time frame stipulated in the Rules of the High Court 1980.

H **[35]** In the upshot, the defendants are not liable for any damages to the plaintiff. The appeal is accordingly allowed with costs fixed at RM5,000. The respondent's cross appeal is dismissed with no order as to costs.

I